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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/688,893   | 10/21/2003  | Glenn E. Macierowski | 17971. 02           | 4972             |
| 37833  | 7590        | 06/02/2006           | EXAMINER            |                  |
| LITMAN LAW OFFICES, LTD<br>PO BOX 15035<br>CRYSTAL CITY STATION<br>ARLINGTON, VA 22215 |             |                      | MAI, TRIM           |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 3727                |                  |

DATE MAILED: 06/02/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                                      |   |  |
|------------------------------|--------------------------------------|---|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/688,893 | <b>Applicant(s)</b><br>MACIEROWSKI ET AL. |  |
|                              | <b>Examiner</b><br>Tri M. Mai        | <b>Art Unit</b><br>3727                   |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 8-10 and 12 is/are rejected.
- 7) ☒ Claim(s) 4, 6, 7, 11, 13 and 14 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/21/03</u> . | 6) <input type="checkbox"/> Other: ____  |

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1. Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It seems that claim 6 should be dependent on claim 5. "the top end", "the bottom end" have no antecedent basis.

2. Claims 1, and 2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tse et al. (5813162) in view of Miller et al. (2954909). Tse teaches a central member 60, a belt loop device 70 integrally engaged on the rear side, a right support member, a right support member 63, and a left and right support members 63, apertures 69A or portion 61 and a support with a longitudinally extending member 10 extending configured for removably being placed within the aperture (via portion 69B). Tse meets all claimed limitations except for aperture. Miller teaches that it is known in the art to provide a rotating means to pivot a support for 360 degree comprising an aperture at 28. It would have been obvious to one of ordinary skill in the art to provide the pivoting structure comprising an aperture in Tse as taught by Miller to provide an alterative pivot.

Regarding claim 2, note that portion 34 are the recesses as claimed. To the degree it is argued otherwise. It would have been obvious to one of ordinary skill in the art to provide portions 34 as recess to prevent the pins 38 from going through the wall member 12.

3. Claims 1-3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starrett (D386612) in view of either Topic et al. (D335392), and further in view of Uyehara (4662552). Starrett teaches a central member, a belt loop device a baton support. Starrett meets all claimed limitations except for the aperture and the right and left support members.

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Topic teaches that it is known in the art to provide right and left support members. It would have been obvious to one of ordinary skill in the art to provide right and left support members as taught by either Topic or Evans to enable one to hold or support other belongings.

With respect to the aperture, Uyehara teaches that it is known in the art to provide aperture at portion 24 in Fig. 5. It would have been obvious to one of ordinary skill in the art to provide an aperture in the main portion to enable the baton holder to rotate.

Regarding claims 3 and 5, it would have been obvious to one of ordinary skill in the art to provide a flat edge for closing the bottom supports of Topic to enable one to hold the contents inside.

4. Claim 8, 9, 10, are, 12, rejected under 35 U.S.C. 103(a) as being unpatentable over the Starrett rejection, as set forth in paragraph 3, and further in view of the admitted Prior art or Starrett (5160140). It would have been obvious to one of ordinary skill in the art to provide a telescoping baton as taught by the admitted Prior art or Starrett to enable one to hold the desired baton.

5. Claims 1-2 are rejected under 35 U.S.C. 103(a) as being unpatentable over Starrett (D386612) in view of Evans (D293956), and further in view of Uyehara (4662552). Starrett teaches a central member, a belt loop device a baton support. Starrett meets all claimed limitations except for the aperture and the right and left support members.

Evans teaches that it is known in the art to provide right and left support members. It would have been obvious to one of ordinary skill in the art to provide right and left support members as taught by either Topic or Evans to enable one to hold or support other belongings.

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With respect to the aperture, Uyehara teaches that it is known in the art to provide aperture at portion 24 in Fig. 5. It would have been obvious to one of ordinary skill in the art to provide an aperture in the main portion to enable the baton holder to rotate.

6. Claims 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Starrett rejection, as set forth in paragraph 5, and further in view of the admitted Prior art or Starrett (5160140). It would have been obvious to one of ordinary skill in the art to provide a telescoping baton as taught by the admitted Prior art or Starrett to enable one to hold the desired baton.

7. Claims 4, 6, 7, 11, 13, and 14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai  
Primary Examiner  
Art Unit 3727

